

(S E R V E D)
(MAY 27, 2015)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 15-03

**JOHN T. BARBOUR t/d/b/a BARBOUR AUTO GROUP;
BARBOUR AUTO SALES; BARBOUR SHIPPING;
AND BARBOUR SHIPPING AND TRANSPORTATION INC. –
POSSIBLE VIOLATIONS OF SECTIONS 8 AND 19 of the SHIPPING ACT**

ORDER OF INVESTIGATION AND HEARING

The Federal Maritime Commission (FMC or Commission) deems it appropriate and in the public interest that a proceeding be, and hereby is, instituted pursuant to section 11 of the Shipping Act of 1984 (Shipping Act), 46 U.S.C. § 41302, against respondent John T. Barbour, an individual trading and doing business as Barbour Auto Group, Barbour Auto Sales, Barbour Shipping, and Barbour Shipping and Transportation Inc., for possible violations of sections 8 and 19(a) and (b) of the Shipping Act, 46 U.S.C. §§ 40501, 40901, and 40902.

Based on information provided to it, the Commission's Bureau of Enforcement makes the following allegations:

**STATEMENT OF FACTS
CONSTITUTING BASIS OF VIOLATIONS**

1. John T. Barbour is an individual who trades and does business under the following fictitious names: Barbour Auto Group, Barbour Auto Sales, Barbour Shipping, and Barbour Shipping and Transportation Inc. (hereinafter referred collectively to as Barbour or Respondent, except where necessary to refer to individual names for clarity).
2. On information and belief, Barbour resides at 146 South St. West, Raynham, MA 02767.
3. Barbour conducts business at offices located at 735 Pleasant St., Fall River, MA 02723.
4. Barbour previously conducted business at offices located at 2151 GAR Highway, Swansea, MA 02777.
5. Barbour is engaged in buying, selling, and shipping used vehicles.
6. On information and belief, Barbour has been providing ocean transportation of used vehicles owned by others from the U.S. to foreign countries for compensation since at least 2013.
7. Barbour is not licensed by the Federal Maritime Commission.
8. Barbour does not have on file with the Commission any evidence of financial responsibility.
9. Barbour does not maintain or keep open for public inspection a tariff containing rates, charges, rules, or practices governing its ocean transportation services.
10. Barbour signed three (3) service contracts with Liberty Global Logistics LLC (Liberty Global), a vessel-operating common carrier (VOCC), viz., No. 2013/1502, effective July 9, 2013; No. 2013/1503, effective October 23, 2013; and No. 2000, effective April 10, 2014.

11. Barbour signed service contract number 675507 with Maersk Line, effective June 10, 2013.
12. In each of the Liberty Global and Maersk contracts specified above, Barbour certified that it was the cargo owner.
13. With respect to at least 74 shipments between July and October, 2014, identified in Attachment A, Barbour booked and shipped 251 vehicles for ocean transportation.
14. In each of the 74 instances listed in Attachment A, Barbour issued a house bill of lading to its customers under the name Barbour Shipping holding out to provide ocean transportation from points in the U.S. to points in Lebanon for compensation.
15. In each of the 74 instances listed in Attachment A, Barbour assumed responsibility for the transportation from the United States to a destination in Lebanon.
16. In each of the 74 instances listed in Attachment A, Barbour tendered the vehicles to Liberty Global, a VOCC, for ocean transportation from the U.S. to points in Lebanon.
17. In each of the 74 instances listed in Attachment A, Liberty Global issued a bill of lading to Barbour Auto Group as the shipper for the ocean transportation of the vehicles for the U.S. to points in Lebanon.
18. In each of the 74 instances listed in Attachment A, Barbour's charges for ocean freight to its customers were marked up over the ocean freight it paid to Liberty Global.
19. In each of the 74 instances listed in Attachment A, Barbour was not the owner of the goods being shipped.
20. On information and belief, between July 2013 and December 3, 2014, Barbour shipped 1,108 or more vehicles from points in the U.S. to points in the Middle East under the above-referenced Liberty Global and Maersk service contracts.

21. On information and belief, Barbour acted as a non-vessel-operating common carrier (NVOCC) on all of said shipments transported under the Liberty Global and Maersk contracts.
22. According to Commission records, Barbour filed four (4) incomplete FMC-18 applications between March 2009 and March 2012.
23. The Commission's Bureau of Enforcement issued a letter dated November 16, 2012, warning Barbour that its operations may be in violation of the Shipping Act.
24. On at least two occasions in 2014, the Commission's New York Area Representative advised Barbour that his operations required a license.
25. On information and belief, Barbour continues to operate as an NVOCC without a license, bond, or tariff.

THE COMMISSION'S JURISDICTION AND REQUIREMENTS OF LAW

26. Section 19(a) of the Shipping Act, 46 U.S.C. § 40901, prohibits any person in the United States from acting as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission.
27. Section 19(b) of the Shipping Act, 46 U.S.C. § 40902, prohibits any person from acting as an OTI unless that person files with the Commission evidence of financial responsibility in a form and amount determined by the Commission.
28. Section 8 of the Shipping Act, 46 U.S.C. § 40501, requires every common carrier to keep open for public inspection tariffs showing all its rates, charges, rules and practices.
29. Under 46 U.S.C. § 40101(19), an OTI means an ocean freight forwarder or a NVOCC. Under 46 U.S.C. § 40101(16), a NVOCC means a common carrier that does not operate

vessels by which the ocean transportation is provided and is a shipper in its relationship with a vessel-operating ocean common carrier. Under 46 U.S.C. § 40101(6), a common carrier means a person that holds itself out to the public to provide ocean transportation between the United States and a foreign country for compensation, assumes responsibility for the transportation, and uses for all or part of the transportation a vessel operating on the high seas between the United States and a foreign country.

- 30. Under 46 U.S.C. § 41302(a), the Commission is empowered to investigate any conduct or agreement that the Commission believes may be in violation of the Shipping Act.
- 31. The Commission may, after notice and opportunity for hearing, issue an order relating to any violation of the Shipping Act, including assessment of a civil penalty. 46 U.S.C. § 41304.

VIOLATIONS OF THE SHIPPING ACT

- 32. It is alleged that Barbour acted as a NVOCC as defined in the Shipping Act without a license with respect to at least 74 shipments identified in Attachment A in violation of Section 19(a) of the Shipping Act, 46 U.S.C. § 40901(a).
- 33. It is alleged that Barbour acted as a NVOCC without filing evidence of financial responsibility with the Commission with respect to at least 74 shipments identified in Attachment A in violation of Section 19(b) of the Shipping Act, 46 U.S.C. § 40902(a).
- 34. It is alleged that Barbour acted as a NVOCC without keeping open for public inspection a tariff showing its rates, charges, rules and practices with respect to at least 74 shipments identified in Attachment A in violation of Section 8 of the Shipping Act, 46 U.S.C. § 40501(a).

ORDER

NOW THEREFORE, IT IS ORDERED That pursuant to sections 11 and 14 of the Shipping Act, 46 U.S.C. §§ 41302 and 41304, an investigation is instituted to determine: (1) whether John T. Barbour, t/d/b/a Barbour Auto Group, Barbour Auto Sales, Barbour Shipping, and Barbour Shipping and Transportation Inc. violated sections 8 and 19 of the Shipping Act, 46 U.S.C. §§ 40501, 40901, and 40902, by acting as a NVOCC without a license, filing evidence of financial security, or keeping open for public inspection a tariff containing its rates, charges, rules and practices; (2) in the event violations of the Shipping Act are found, whether civil penalties should be assessed against Barbour, and in what amount; and (3) whether appropriate cease and desist orders should be entered.

IT IS FURTHER ORDERED, That John T. Barbour is designated Respondent in this proceeding;

IT IS FURTHER ORDERED, That the Commission's Bureau of Enforcement is made a party to this proceeding;

IT IS FURTHER ORDERED, That within 25 days from date of publication of this Order in the Federal Register, Respondent must file with the Commission and serve upon the Bureau of Enforcement an Answer to the allegations in this Order, in accordance with the requirements of the Commission's regulations set forth in 46 C.F.R. § 502.63(c). Respondent's answer must be verified and admit or deny all allegations in this Order. Allegations not denied shall be deemed admitted.

IT IS FURTHER ORDERED, That this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be determined by the Administrative Law Judge in compliance with Rule

61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61. This hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

IT IS FURTHER ORDERED, That failure of Respondent to timely file an answer to this Order may be deemed to constitute default and authorize the presiding Administrative Law Judge, without further notice to Respondent, to find the facts to be as alleged and to enter a decision containing appropriate findings, conclusions, and an order.

IT IS FURTHER ORDERED, That other persons having an interest in participating in this proceeding may file motions for leave to intervene in accordance with Rule 68 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.68;

IT IS FURTHER ORDERED, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on the parties of record;

IT IS FURTHER ORDERED, That all documents filed by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, secretary@fmc.gov, in accordance with Rule 2 of the

Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.2, and shall be served on the parties of record; and

IT IS FURTHER ORDERED, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61, the initial decision of the Administrative Law Judge shall be issued by May 26, 2016 and the final decision of the Commission shall be issued by December 7, 2016.

By the Commission.

Karen V. Gregory
Secretary